

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MARTIN MAZZARA, and individual,

Plaintiff,

vs.

ZIONS FIRST NATIONAL BANK, N.A.,
NEVADA STATE BANK, ZIONS
BANCORPORATION,

Defendants.

Case No.: 2:10-cv-01822-RLH-PAL

ORDER

(Motion for Temporary Restraining
Order #2)

Before the Court is Plaintiff Martin Mazzara's **Motion for Tempora Restraining Order** (#2), filed October 20, 2010. Plaintiff filed this motion *ex parte*.

BACKGROUND

The following are the facts as alleged by Mazzara. Mazzara currently owns the residence located at 609 China Doll Place, Henderson, Nevada 89102 (the "Property"). He purchased the Property after obtaining a loan from Nevada State Bank ("NSB") in October 2003. NSB violated the federal Truth in Lending Act ("TILA") by misleading Mazzara regarding the terms of his loan and the Real Estate Settlement Procedure ("RESPA") by receiving illegal kickbacks.

1 parte relief under Rule 65 is very stringent. *Reno Air Racing Ass'n v. McCord*, 452 F.3d 1126,
 2 1130 (9th Cir. 2006). The Court will only issue an *ex parte* TRO where it appears there would be
 3 an irreparable injury before the responding party can be heard and where the party has made the
 4 proper certifications. Fed. R. Civ. P. 65(b)(1). In reality, a TRO is a temporary preliminary
 5 injunction issued for a limited period of time until the time when the opposing party has an
 6 opportunity to be heard. Rule 65's stringent restrictions on *ex parte* relief "reflect the fact that our
 7 entire jurisprudence runs counter to the notion of court action taken before reasonable notice and
 8 an opportunity to be heard has been granted both sides of a dispute." *Granny Goose Foods, Inc. v.*
 9 *Bhd. of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 438–39 (1974).

10 Mazzara did not satisfy the requirements of Rule 7-5 or Rule 65(b)(1)(B)
 11 concerning *ex parte* motions. Mazzara's motion does not make any statement regarding why the
 12 motion was brought *ex parte* or as to any good cause for doing so. Further, the motion does not
 13 address efforts to obtain a stipulation or why one was not obtained. For these reasons, the Court
 14 denies Mazzara's motion.

15 **B. Likelihood of Success on the Merits**

16 Further, Mazzara has not demonstrated a likelihood of success on the merits.
 17 Mazzara claims that by merely alleging violation of various state and federal laws in relation to the
 18 origination of his mortgage loan he has shown a likelihood of success on the merits. Allegations
 19 are insufficient to show likelihood of success. Mazzara has not presented any argument as to why
 20 he is likely to succeed on the merits and the Court has not found any such reason either. The Court
 21 also notes that Mazzara's federal TILA and RESPA claims are both likely time-barred by one year
 22 statutes of limitations since the loan in question was made in 2003. *See* 15 U.S.C. § 1640; 12
 23 U.S.C. § 2614 (2006). Therefore, even had Mazzara complied with Rule 7-5, since Mazzara has
 24 not shown that he is likely to succeed on the merits, the Court would deny the motion.

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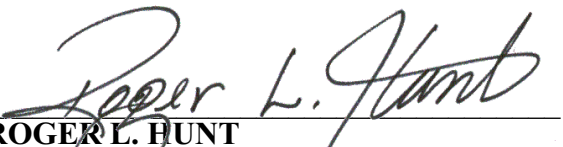
CONCLUSION

Accordingly, and for good cause appearing,

IT IS HEREBY ORDERED that Plaintiff's Emergency *Ex Parte* Motion For
Temporary Restraining Order (#2) is DENIED.

IT IS FURTHER ORDERED that the Clerk of the Court shall unseal this motion as
Plaintiff failed to comply with the *ex parte* requirements of Local Rule 7-5.

Dated: October 21, 2010.



ROGER L. HUNT
Chief United States District Judge